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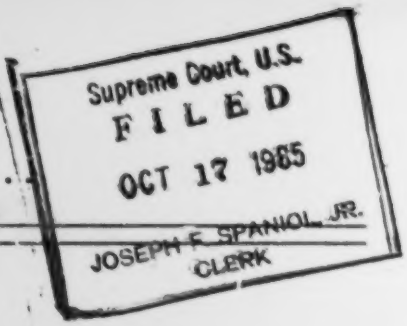

No. ....

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

JACOB SAMPSON,

Petitioner,

v.

FRED B.RASKIN, MYRON A.BERGER & JOHN M.BARNES

Respondents.

==========

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

==========

6138 N.Clark St.,
Chicago,Ill.60660
(312) 761-0766

Jacob Sampson,
Petitioner pro se.

QUESTIONS PRESENTED

1. Whether §1981 and §1985 should be expanded to protect United States citizen of Jewish faith and ancestry against race discrimination ?

2. Whether immigrants should be protected as a minority under §1985 against "legal terror" of conspiring attorneys ?

3. Whether individuals who are not members of §1985 protected class may nevertheless bring a §1985 suit for damages against deprivation of equal protection of laws ?

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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

==========

Petitioner Jacob Sampson respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on June 4,1985.

OPINIONS BELOW

The decision of the Court of appeals, which is not reported, is set out at pp.13a-23a,of the Appendix. The order denying rehearing, which is not reported, is set out at p. 28a; The district court Findings of Fact, Conclusions of law and order, which are not reported, is set out at pp.1a-12a, of the Appendix.

JURISDICTION

The judgment of the court of appeals was entered on June 4,1985. A timely petition for rehearing was filed, which was denied on July 1,1985. On September 24,1985, Justice John Paul Stevens granted an order extending the date on which the petition for writ of certiorari is due until October 15,1985. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The resolution of the issues presented in this petition involves the Fifth, Seventh and Fourteenth Amendments of the United States Constitution and the federal statutes authorizing civil actions for deprivation of rights, 42 U.S.C.§1981 and 42 U.S.C.§1985.

United States Constitution, Amendment V provides in pertinent part:

> "No person shall be deprived of life liberty, or property, without due process of law;"

United States Constitution, Amendment VII provides in pertinent part:

> "In suits of common law ... the right for trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

United States Constitution, Amendment XIV provides in pertinent part:

> "No State shall make or enforce any law which shall abridge the privileges-or immunities of citizens of the

> United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its 'jurisdiction the equal protection of the laws.'"

STATEMENT OF THE CASE

This is an action brought under 42 U.S.C. §1981 and 42 U.S.C.§1985, by a pro se litigant, an immigrant of Jewish faith and ancestry, for declaratory relief and damages against attorneys.

The complaint alleged that defendants conspired to deprive the plaintiff of the equal protection of the laws and equal privileges and immunities under the laws, and pursuant to this conspiracy deprived the plaintiff of his life savings.

This petition involves two related proceedings which were not consolidated in the Courts for argument and decision.

A. Factual background.

This case arises out of an episode of mob violence (at 4240 North Kenmore Avenue,

Chicago, Illinois) during which the building owner was injured and the property destroyed. That occured in July, 1966.

The property was insured by Hartford Insurance Company, who denied compensation contrary to provisions of the insurance policy.

Sampson retained Raskin to represent him against Hartford for breach of contract.

In the State Court proceedings Raskin falsely claimed that the file was stolen, thus suppressing the critical evidence for the benefit of Hartford.

B. Proceedings in the State Court against Raskin:

On September 24,1976, Sampson initiated a malpractice suit against Raskin, alleging conspiracy with opposing attorney representing Hartford, in deliberate concealment of the documents, against his client Sampson's interests.

Sampson retained attorney Berger to represent him against Raskin, who in turn hired

Barnes to defend him in malpractice suit.

Here a carbon copy of attorney's betrayal followed: Berger in collusion with Barnes, deliberately failed to compl with court orders, causing Sampson's case be dismissed with prejudice.

Sampson being let down by corrupt and unethical lawyers, who brought the litigation to a legal nullity, which entitled Sampson to address his grievance to the Federal Court.

C. Proceedings in the Federal District Court.

On November 17, 1983, Sampson initiated this lawsuit against the individual defendants: Raskin, Berger and Barnes, claiming that a pattern being followed or practice of intentional discrimination by an entire group of attorneys, by treating him less favorably because of his race being Jewish, and class discrimination because of him being an Immigrant.

Here still another conspiracy followed by

two more attorneys: Robert J.Milligan representing Raskin and Barnes, and William J. Furey representing Berger.

In the course of the foregoing, Milligan distorted a few facts, and Furey misrepre - sented some authorities, resulting in that the District Court refused to exercise its jurisdiction and dismissed the action without allowing a second amended complaint.

The deception did occur in the open Court and in most aspects of judicial proceedings. The above named attorneys never made an attempt to deny their wrongdoings.

On June 1,1983, the Illinois Supreme Court entered an order disbarring attorney Berger, based on numerous complaints of diverting clients' funds to his own personal use.

D. Proceedings in the Court of Appeals.

The plaintiff appealed, objecting to District Court's reference that" a private conspiracy only against blacks satisfied a

showing of some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind conspirators' action." (11a)

Sampson further objected to the denial of leave to file a second amended complaint, which should have been given, when justice so requires, pursuant to Rule 15 of the Federal Rules of Civil Procedure.

Plaintiff Sampson suffered substantial economic losses because of defendants' racially discriminatory practices, and can obtain relief only through this equitable proceeding seeking enforcement of plaintiff's right under 42 U.S.C.§1981 and §1985.

The District Court was mislead by conspiring attorneys, and abused its discretion by denying to plaintiff his day in Court.

The Court of Appeals made no effort to scrutinize the record, and upheld District Court's dismissal.

The issues to be disposed by this Court involve controlling questions of law as to

which there is substantial ground for difference of opinion and that an immediate review of the issues involved may materially advance the termination of the litigation.

REASONS FOR GRANTING THE WRIT

The gist of the issue of first impression presented by this case concerns the question whether discrimination against Immigrants and against United States citizens of Jewish faith and ancestry, violates Sections 1981 and 1985.

A. PETITIONER STATES A CLAIM PURSUANT TO 42 U.S.C.§1981

One of the petitioner's asserted grounds of Federal jurisdiction, Section 1981 et seq. Section 1981 provides:

> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

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The question tendered is whether 42 U.S.C. §1981 prohibits discrimination under the allegations of the complaint including, inter alia, breach of contracts. Initially then, the court is faced with a question of statutory construction and, accordingly, we must first turn to the text of the statute as quoted above. The statute's language is of extraordinary breadth. It does not speak in terms of race, religion or nationality but, on the contrary, speaks of "all persons."

This act creates a cause of action against persons who violate the equal benefit of all laws and proceedings for the security of persons and property, and the right to be free from unequal punishment, pains, penalties... See Spriggs v. City of Chicago, 523 F.Supp.146 (N.D.Ill.E.D.1981).

Petitioner (plaintiff) in his complaint alleged that he is of Jewish faith and ancestry and that he was discriminated against on the basis of his racial identification.

In view of the interrelated nature of national origin, ethnic and racial discrimination found by the courts, see Garcia v. Rush Presbiterian-St.Luke's Medical Center, 80 F.R.D. at 263, an allegation of Jewish ancestry coupled with an allegation of racial discrimination is sufficient to properly bring the complaint within the ambit of section 1981. These two allegations clearly imply that the plaintiff believes he was discriminated against because he is classified as "different" due to his Jewish ancestry.

As stated in Ortiz v. Bank of America, 547 F.Supp.550 (1982):

> "Without doubt blacks have been the subject of the most persistent racism in this country. Nonetheless, "racial" justification for discrimination against almost every immigrant (and native) group has plagued this country's intellectual history... The history of "racial prejudice" against Jews throughout Europe and in this country appears to be so well known as almost not to require documentation."

In addition, requiring the alleging of a specific race without any consideration of

the other factors seems to imply rigid racial classification for the purposes of section 1981, classifications already rejected by the court. See Ortiz, supra at 561.

The section, however, is not necessarily directed to discrimination against a different "race" in the technical sense. See Keating v. Carey, 706 F.2d 377 (2d Cir.1983); Manzanares v. Safeway Stores,Inc.,593 F.2d 968,971 (10th Cir.1979); See generally Aponte v. National Steel Service Center, 500 F.Supp. at 202-03. Although discrimination based on national origin is generally not considered to be within the ambit of section 1981, see Jones v. Alfred H.Mayer Co. 392 U.S. 409, 413 (1968)(a §1982 case applying to §1981 through Runyan v. McCrary, 427 U.S.171 (1976); Plummer v. Chicago Journeyman Plumbers Local Union No.130, 452 F.Supp. 1127, 1142 (N.D.Ill.1978), rev'd on other grounds, 657 F.2d 89 (7th Cir.1981), cert. denied, 455 U.S.1017 (1982), the Court in

Aponte, found "a degree of identity between claims of national origin or ethnic background discrimination and racial discrimination." Aponte supra, at 202. See Garcia supra at 254, 263. In Aponte the Court, in finding that Hispanics were covered by section 1981, was persuaded by the dicta in Budinsky v. Corning Glass Works, 425 F.Supp.786 (W.D.Pa.1977), which disputed the validity of rigid racial classification in section 1981 actions.

The Court in Budinsky wrote:

> The terms "race" and "racial discrimination" may be of such doubtful sociological validity as to be scientifically meaningless, but these terms nonetheless are subject to a commonly-accepted, albeit sometimes vague, understanding. Those Courts which have extended the coverage of §1981 have done so on a realistic basis, within the framework of this common meaning and understanding. On this admittedly unscientific basis, whites are plainly a "race" susceptible to "racial discrimination;"
>
> Hispanic persons and Indians, like blacks, have been traditional victims of group discrimination, and, however inaccurately or stupidly, are frequently and even commonly subject to a "racial" identification as "non-whites." There is

> accordingly both a practical need and a logical reason to extend § 1981's proscription against exclusively "racial" discrimination to these groups of potential discriminatees.

This view of race in the contex of actions brought under section 1981 has been directly cited and accepted by a number of courts in the Northern District of Illinois, Eastern Division. See Badillo v. Central Steel & Wire Co.,89 F.R.D.142 (N.D.Ill.1981)(Shadur, J.) Aponte v. National Steel Service Center,500 F.Supp. at 202-03 (Moran, J.); Garcia v.Rush-Presbiterian-St.Luke's Medical Center, 80 F.R.D. 254, 263-64 (N.D.Ill.1978)(Leighton,J.); Ortega v. Merit Insurance Co., 433 F.Supp. 135, 138-39 (N.D.Ill.1977)(Will, J.); See also Carrillo v. Illinois Bell Telephone Co. 538 F.Supp.793, 796 (N.D.Ill.1982)(Getzendanner, J.).

Respondents (defendants) conveniently overlooked local Courts' ruling. Whatever their argument may be, the fixed and rigid racial classification have been rejected because of

their doubtful scientific and sociological validity, see Budinsky, supra at 788, and the dynamic biological, anthropological and historical notions surrounding the idea of race. See Ortiz, supra at 550, 567 (E.D.Cal. 1982); T.Gossett, Race--The History of an Idea in America (1963). "To be blunt, the court should not be in the business of permanently classifying groups of people, not just because it is unpalatable -- but because it is untrue. " Ortiz, supra at 568. Instead of a rigid approach based on specifically quantitative criteria, such as mean educational achievements, mean earnings or anthropological racial classifications, courts following the Budinsky rationale have employed a pragmatic and flexible approach. See Id. at 567, Budinsky, supra at 788.

This approach analyzes all relevant factors in determining whether members of a group are "Discriminated against because they are somehow different as compared to 'white citizens'". See Manzanares, supra at 571.

Viewed in light of these principles, a group can be discriminated against as non-whites despite achieving as a group a measure of wealth and success. Groups classified as caucasians have frequently been thought racially inferior to the majority, see Ortiz, supra at 565 (Both the German and Irish immigrants... were believed by many to be 'racially' inferior."); T.Gossett, Race--- The History of an Idea in America, at 287-309.

The vicious anti-Semitism directed against the Jews of Nazi Germany, for example, was racially motivated despite fulfillment of both conditions.

A number of courts have allowed section 1981 actions to be brought by Jews; some explicitly finding Jews covered. See Marlowe v. Fisher Body, 489 F.2d 1060 (6th Cir.1973), and some implicitly finding so by determining the validity of the case on their merits. See Klupt v. Blue Island Fire Dept.,489 F.Supp. 195.

Illustrative of this point from the Seventh Circuit:(25a)

> "Race, of course, is the quintessential invidious class. Indeed, the Supreme Court has not clearly explicated what classes, other than racial ones, might be protected by §1985(3). See United Brotherhood of Carpenters & Joiners v. Scott, 103 S.Ct.3352, 3359 (1983); Griffin v. Breckenridge, 403 U.S.88,102 n.9 (1971). However, the same characteristics which are immutable to the black race apply equally to the Jewish people. Like blacks, Jews have been the victim of 'historically pervasive discrimination'." (emphasis added)

Thus, a section 1981 cause of action lies in the kind of case presented here where petitioner alleges discrimination on the basis of membership in a group composed of both men and women, the boundaries of which are not fixed by age or exclusively by religious faith, and which is of a character that it is or may be perceived as distinct when measured against the group which enjoys the broadest rights.

In this regard petitioner alleges that he

is of European-Jewish descent. Whether such allegation is viewed as one of membership in a discrete unit (European-Jewish) or as of membership in a broader "Semitic" group, petitioner in effect, alleges that he is a member of a distinct group which has been recognized as having been the subject of discrimination for many centuries. He alleges that on the basis of his Jewish descent (historically the "perfect victim" to be robbed and abused with impunity), he was in the course of the foregoing incident on July 1966, and since, conspired against, and was deprived of his constitutional and civil rights, privileges and immunities to which he is entitled as a citizen of the United States and as a member of the Human race.

B. PETITIONER STATES A CLAIM PURSUANT TO 42 U.S.C.§1985

The other asserted basis of Federal Jurisdiction, Section 1985 provides:

> "Depriving persons of rights or privileges '(2)...if two or more

> conspire for the purpose of impeding hindering, obstructing or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws,.."

The portion of §1985(2) upon which petitioner (plaintiff) relies, employs virtually the same language regarding the deprivation of equal protection as contained in the first portion of §1985(3), upon which petitioner also bases his complaint.

> Section 1985(3):
> If two or more persons in any State or territory conspire... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws;... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

This act creates a cause of action against persons who conspire with civil rights with some racial or class based invidiously discriminatory animus. The plaintiff's complaint alleged that defendants: Raskin, Berger and Barnes, and their attorneys Furey and Milligan, conspired to cause loss of property and deprived plaintiff of rights and privileges of a citizen of the United States.

Plaintiff's complaint alleged racial discrimination and class-based animus.

The "class-based, invidiously discriminatory animus" referred to in Griffin v. Breckenridge, 403 U.S.88, 102, 91 S.Ct.1790,1798, 29 L.Ed.2d 338 (1971), relates "to that kind of irrational and odious class discrimination akin to racial bias-such as discrimination based on national origin or religion."

In Cartolano v. Tyrrell, 421 F.Supp.526 (1976), Arnold v. Tiffany, 359 F.Supp.1034, 1036 (C.D.Cal.) aff'd, 487 F.2d 216 (9th Cir. 1973), 415 U.S.984, 94 S.Ct.1578, 39 L.Ed.2d

881 (1974), and as indicated by the Seventh Circuit's most recent comment on §1985, only those classes falling within a broad interpretation of "suspect classifications" qualify for protection under the Griffin interpretation of the statute. Murphy v. Mount Carmel High School, 543 F.2d at 1189 n.1 (7th Cir.1976).

The Seventh Circuit stands virtually alone in its extremely restrictive view of the meaning of §1985, and even the Seventh Circuit has not been entirely consistent in this view. Compare Cohen v. Illinois Institute of Technology, 524 F.2d 818, 829-30 n.33 (7th Cir.1975), cert. denied, 425 U.S. 943 (1976) with Murphy v. Mount Carmel High School, 543 F.2d 1189 (7th Cir.1976)(rejecting the Cohen view). See also Dear v. Rathje, 391 F.Supp.1, 8 (N.D.Ill.1975),aff'd mem.,532 F.2d 756 (7th Cir.1976) and Franceschina v. Morgan, 346 F.Supp.833 (S.D.Ind. 1972).

The most glaring inconsistency of the

Court of Appeals for the Seventh Circuit appears in the opinion entered on June 4, 1985 (25a), where is stated that:

> "... the same characteristic which are immutable to the black race apply equally to the Jewish people. Like blacks, Jews have been the victim of 'historically pervasive discrimination'."

which did not prevent the very same Court from dismissing the entire action for "failure to state a federal claim."

There can be no justification for reaching a different result in the present case where the statute explicitly provides for recovery by anyone injured as a result of the proscribed conspiracy.

The Ku Klux Act, 17 Stat.13, was enacted on April 20,1871, less than a month after President Grant sent a dramatic message to Congress describing the breakdown of law and order in the Southern States. Cong.Globe, 42d Cong.,1st Sess.236, 244 (1871).

During the debates, supporters of the bill repeatedly described the reign of terror

imposed by the Klan upon black citizens and their white sympathizers in the Southern states.

It is clear from the legislative debates that, in the view of the Act's sponsors, the victims of Klan outrages were deprived of "equal protection of the laws" if the perpetrators systematically went unpunished.

Proponents of the measure repeatedly argued that, given the ineffectiveness of state law enforcement and the individual's federal right to "equal protection of the laws," an independent federal remedy was necessary and Congress had the power to provide it,and did.

This Court has the power to enforce the law, to curb the "legal terror" in our community, perpetrated by unethical lawyers-respondents in this action.

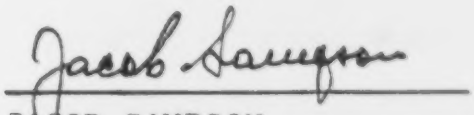
CONCLUSION

Petitioner does not argue for the establishment of a general federal law of torts. Rather, petitioner seeks merely the enforcement of the core of Section 1985 -- the provision of federal relief from racially inspired legal terror. Indeed, if respondents' (defendants') conduct does not fall within §1985, the work of the 42nd Congress will be trivialized and the Congressional attempt to establish an effective remedy against racial terrorism will be reduced to a prohibition against attacking Blacks travelling on interstate highways.

While such a prohibition is, of course, worthwhile, it is a far cry from the ambitious efforts of the 42nd Congress to stem the depredations of the Ku Klux Klan.

For the above reasons a writ of centiorari should issue to review the judgment and opinion of the Seventh Circuit.

Respectfully submitted,



JACOB SAMPSON
Petitioner pro se.

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CERTIFICATE OF SERVICE

This is to certify that I am the Petitioner pro se, and that I have this date served copies of the above and foregoing Petition for Writ of Certiorari upon the following persons by delivering three (3) copies personally to:

ROBERT J.MILLIGAN
c/o HINSHAW, CULBERTSON, MOELMANN,HOBAN & FULLER
69 WEST WASHINGTON STREET, CHICAGO,ILL.60602

WILLIAM J.FUREY
c/o CASSIDAY, SCHADE & GLOOR
333 WEST WACKER DRIVE, CHICAGO, ILL. 60606

This 25TH day of November, 1985.

Jacob Sampson

6138 N.Clark St.,
Chicago, Ill.
60660
(312) 761-0766

Jacob Sampson
Petitioner pro se.

PROOF OF SERVICE:
3 copies received:

HINSHAW, CULBERTSON, MOELMANN, HOBAN & FULLER
D. Roppolo
November 25, 1985
3:23 pm

Janice M. Owen

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JACOB SAMPSON,
Plaintiff,
v. No.83 C 6369
FRED B.RASKIN, et al.,
Defendants.

MEMORANDUM OPINION

This matter is now before the court on defendants' motion to dismiss plaintiff's pro se complaint for, inter alia, failure to state a claim upon which relief can be granted. Fed.R.Civ.P.12(b)(6).

FACTS

Briefly, the background[1]/underlying this dispute is as follows. In 1966, plaintiff Jacob Sampson hired defendant Fred Raskin, an attorney, to represent him in a state court action against plaintiff's insurer to recover for damages to plaintiff's building. According to plaintiff, throughout the course of his representation of plaintiff Raskin lied and failed to follow his instructions. In 1976, plaintiff filed a legal malpractice action

against Raskin in state court. Plaintiff subsequently hired Myron Berger to represent him in his malpractice action against defendant Raskin. Raskin in turn hired the third and final defendant in this case, John Barnes, to represent him in the malpractice suit. The state court ultimately dismissed with prejudice plaintiff's malpractice action against Raskin.

Plaintiff now brings this federal action, naming as defendants the three attorneys involved in the state court proceedings described above.[2] In his three-count complaint, plaintiff sets forth malpractice,[3] breach of contract, and civil rights allegations. Because Counts I and II set forth state law, rather than federal, causes of action, and no diversity of citizenship is alleged or appears to exist,[4] any jurisdiction we have over this lawsuit must rest on Count III of the complaint, the only count which properly alleges a federal cause

of action.[5/] We proceed, therefore, to an examination of that count.

DISCUSSION

We note at the outset that we have an obligation to read the complaint of a pro se litigant liberally. Haines v. Kerner, 404 U.S.519, 520 (1972)(per curiam).

Essentially, the gist of Count III is that defendants Barnes and Berger conspired to cause the dismissal with prejudice of plaintiff's legal malpractice suit against defendant Raskin. In support of his conspiracy charge, plaintiff alleges that he heard and saw Barnes and Berger "on several occasions plotting defeat of plaintiff's cause." Amended Complaint ¶37.

Reading the complaint liberally, plaintiff's conspiracy charge appears to be grounded on 42 U.S.C.§1985(2). Because it is also conceivable that the charge is based on 42 U.S.C. §1985(3), we will consider that section as well. In pertinent part, 42 U.S.C.§1985 provides:

Obstructing justice, intimidating party, witness, or juror.

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges.

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws;...[and]... do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person

> or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

Plaintiff's §1985(2) claim would be that defendants conspired to impede or obstruct justice in plaintiff's state court malpractice proceeding, with the intent to deny plaintiff the equal protection of the laws.[6/] With regard to a potential §1985(3) charge, plaintiff would claim that defendants conspired to deprive him of his equal protection rights, or equal privileges and immunities under the laws.[7/] Under either section, in order to survive the motion to dismiss, plaintiff must set forth allegations of a conspiracy intended to deny him his equal protection rights.[8/]

Conspiracy Allegations

We have held that a bare averment of conspiracy, without factual allegations supporting it, is insufficient to state a claim

under §1985. Michael D.Thomas, et al. v. Rohner-Gehrig & Co.,et al.,No.83 C 5645,slip op. at 6 (N.D.Ill.March 14,1984)(Grady, J.). Ordinarily, then, conspiracy allegations must be pleaded with some specificity. The allegations of conspiracy in plaintiff's complaint are sweeping and vague. Nevertheless, given plaintiff's pro se status, and reading the complaint in conjunction with plaintiff's other filings, we believe plaintiff's allegations are sufficient to apprise defendants of the nature of the claim against them.

Denial of Plaintiff's Equal Protection Rights

Section 1985 reaches not only conspiracies involving state action, but also purely private conspiracies. United Brotherhood of Carpenters & Joiners v. Scott,___ U.S.___,103 S.Ct.3352 (1983); Griffin v. Breckenridge, 403 U.S.88 (1971). Plaintiff does not allege state action, and indeed there does not appear to be any state involvement in this case. 9/ Thus, the alleged conspiracy against plaintiff was purely private.

The Supreme Court has recently stated that although §1985(3) does reach certain private conspiracies, such conspiracies must have been motivated by a class-based, invidiously discriminatory animus. United Brotherhood, supra, 103 S.Ct. at 3359.[10/] For the following reasons, we hold that plaintiff's complaint fails to establish the necessary class-based animus.[11/]

Failure to Allege Sufficient Facts

A plaintiff in a §1985 case "must allege facts showing that the defendant conspired against the plaintiff because of his membership in a class..." Brainerd v. Potratz, 421 F.Supp.836,839 (N.D.Ill.1976), aff'd 566 F. 2d 1177 (7th Cir.1977). A conclusory statement that plaintiff was discriminated against because of some class characteristic(s) is inadequate; he must allege specific facts indicating the existence of a class-oriented invidious animus. Cf. Sutliff,Inc.,et al. v. Donovan Companies,Inc.et al.,Nos.83-1308,

83-1499, slip op.at 7-8 (7th Cir.Feb.9,1984).

Plaintiff in this case has not set out the specificity necessary to assure us that his claim has any basis in fact. In an attempt to demonstrate the existence of class-oriented discrimination, plaintiff asserts in his amended complaint that defendants conspired to discriminate against him because he was/ is "a pro se litigant, immigrant and Jewish." Amended Complaint, ¶2.[12/] Plaintiff does not allege facts supporting this contention, or indicating that any of these characteristics had any relationship whatsoever to defendants' actions. Indeed, nothing plaintiff refers to supports his assertion of class-based discrimination. Although we accept as true the well-pleaded facts in the complaint, and read the pleadings liberally, we are compelled to rule that plaintiff's "sterile, isolated contention, without more, simply does not state a claim for a [class-based] conspiracy in violation of Plaintiff's civil rights." Rodriguez v. Carroll, 510 F.Supp.547,552 (S.D.Tex.

1981). See also Croy v. Skinner, 410 F.Supp. 117, 125 (N.D.Ga.1976). Thus, we hold that plaintiff's amended complaint fails to state a claim under 42 U.S.C.§1985. Plaintiff simply has not demonstrated that any conspiracy was intended to deprive him of his right to equal protection under the laws.[13/]

CONCLUSION

We conclude that plaintiff has failed to state a §1985, or any other,[14/] federal cause of action.[15/] Accordingly, we order that this action be dismissed.[16/]

Dated: March 30,1984

Signed: John F.Grady, United States District Judge.

1/ In passing on motions to dismiss for failure to state a claim, we accept the well-pleaded factual allegations as true. Parr v. Great Lakes Express Company, 484 F.2d 767, 769-70 (7th Cir.1973).

2/ Defendant Berger is no longer an attorney.

3/ Although plaintiff characterizes his first count as one for "Deprivation of Constitutional and Civil rights," it is clear that this count really involves a malpractice or other tort claim against defendant Raskin.

4/ See 28 U.S.C.§1332.

5/ Plaintiff also asserts that jurisdiction is based on 28 U.S.C.§1441, the federal removal statute. Because this lawsuit is not one that has been removed from state court in accordance with the removal requirements, §1441 does not afford us jurisdiction over this matter.

6/ Plaintiff's claim could not be based on the first part of §1985(2), as that section is directed at conspiracies obstructing justice "in any court of the United States," and therefore only applies to actions in the federal courts. See, e.g., DeBoer v. Martin, 537 F.Supp.1159,1161 (N.D.Ill.1982); Cartolano v. Tyrrell, 421 F.Supp.526, 531-32 n.3 (N.D.Ill.1976).

7/ In the complaint, plaintiff also alleges that defendants conspired to deprive him of his due process rights. Complaint, ¶¶1,16. Section 1985, however, applies only to conspiracies to deprive some person or a class of persons of equal protection, and does not afford a right of action based upon denial of Fourteenth Amendment due process rights. See, e.g., Brosten v. Scheeler, 360 F.Supp. 608, 614 (N.D.Ill.1973),aff'd, 495 F.2d 1375 (7th Cir.1974).

8/ Plaintiff does not assert that defendants conspired to deprive him of any equal privileges and immunities. Thus, we focus on the asserted deprivation of equal protection rights.

9/ It is by now axiomatic that state licen-sing and regulation of attorneys does not convert the action of private attorneys invol-ved in state litigation into state action for purposes of the federal civil rights statutes. See, e.g., Hansen v. Ahlgrimm, 520 F.

2d 768, 770 (7th Cir.1975); French v. Corrigan, 432 F.2d 1211, 1214-15 (7th Cir.1970), cert. denied, 401 U.S.915 (1971), Moss v. Varian, 537 F.Supp.711,712 (N.D.Ohio 1982).

10/ Conspiracy suits brought under the "state court" portion of §1985(2) also require allegations of class-based discrimination. See, e.g., DeBoer v. Martin, supra, 537 F. Supp. at 1161.

11/ We do not address whether the alleged conspiracy is actionable notwithstanding the lack of state action.

12/ Obviously, plaintiff was not pro se when he was represented by defendant Berger in the state court malpractice action against Raskin.

13/ Even if plaintiff could set forth facts supporting his allegation that defendants conspired against him because he was an immigrant and Jewish, his right to proceed under §1985 would be far from clear. As we noted above, §1985 reaches certain private conspiracies. In Griffin v. Breckenridge, supra at 102, the Court stated that the language of §1985(3) requires a showing of"some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." The Court held that a private conspiracy against blacks satisfied such a showing. The Court declined to decide whether a non-racial animus would be covered under §1985. More recently, in United Brotherhood, supra, the Court again addressed §1985's requirement of class-based discrimination, and again declined to determine whether that section reaches non-racial discrimination. Id. at 3360.

We doubt that §1985 reaches purely private conspiracies that are not based on a racial animus. Our belief is supported by other

courts' recent decisions. See, e.g.,Wilhelm v. Continental Title Co., 720 F.2d 1173, 1176 (10th Cir.1983)(§1985 only covers conspiracies motivated by a racial or race related animus). See also Fiske v. Lockheed-Georgia Co., A Div. of Lockheed, 568 F.Supp.590 (N.D.Ga.1983). Because we doubt that §1985 reaches private conspiracies that are not racially motivated, it would seem that plain-tiff fails to state a 42 U.S.C.§1985 claim on this ground as well.

14/ Because plaintiff is pro se, we have considered sua sponte whether he raises a valid 42 U.S.C.§1983 claim. Section 1983, however, requires a showing of state action or other state involvement. Because there is no state involvement in this claim, see n.9, supra, we must conclude that plaintiff does not have a valid §1983 claim either.

15/ In light of this conclusion, we will not exercise pendent jurisdiction over plaintiff's state claims.

16/ In their motions and memoranda, defendants also raised res judicata and statute of limitations arguments. Given our disposition above, we do not address these issues.

We also hereby deny all of plaintiff's outstanding motions, including his "Motion for Rule on Res Judicata," and his "Motion for Sanctions for Abuse."

We hereby grant defendant Berger's motion to strike certain of the plaintiff's filings, and order that the Clerk of the Court expunge from the record the Statement of Charges and Complaint against Berger by the Administrator of the Illinois Attorney Registration and Disciplinary Commission.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Chicago, Illinois 60604
Submitted April 23,1985*

June 4,1985

No.84-1730 Before

Hon. JESSE E.ESCHBACH, Circuit Judge
Hon. JOHN L.COFFEY, Circuit Judge
Hon. JOEL M.FLAUM, Circuit Judge

JACOB SAMPSON, Plaintiff-Appellant, vs. FRED B.RASKIN, MYRON A. BERGER & JOHN M.BARNES, Defendants-Appellees.	: Appeal from the United States : District Court for the Northern District of Illinois, : Eastern Division. : No.83 C 6369

O R D E R

Dissatisfied with the results of various state court actions, pro se appellant Jacob Sampson commenced an action in the United States District Court for the Northern District of Illinois alleging that three attorneys involved in the state proceedings conspired to defeat his attempts to seek legal redress and thereby deprived him of his right to equal protection under the laws. The district court dismissed the action in its entirety for failure to state a federal claim.

Sampson now appeals from this order and

the court's subsequent denial of Sampson's motion to vacate the dismissal order and for leave to amend his complaint. We affirm.

The events giving rise to this appeal originated in 1966 when Sampson retained Fred Raskin to represent him in a state court action against his insurer to recover insurance proceeds for damages to an apartment building owned by Sampson.

Dissatisfied with the jury award, Sampson sued Raskin in state court for legal malpractice and retained Myron Berger to represent him. Raskin in turn hired John Barnes to defend him in the malpractice suit. As a result of Sampson's failure to comply with a discovery order, the lawsuit was dismissed with prejudice. The Illinois Appellate Court affirmed the action, and the Illinois Supreme Court denied leave to appeal. Sampson then filed an action in state court against Berger and Barnes alleging that they conspired to cause the dismissal of this action against Raskin. While the claim against Barnes was

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dismissed, the action, we are told, is still pending as to Berger. Finally, in an attempt to revive his state court claim Sampson filed the instant federal court action in 1983 in which he consclidates the various claims against Raskin, Berger and Barnes into a three -count complaint. The district court found that Count I (malpractice) and Count II (breach of contract) raised solely state law claims and since no diversity of citizenship was alleged or appeared to exist, the court concluded that federal jurisdiction was dependent upon the allegations of Count III (civil rights conspiracy).[1] Sampson was allowed to replead once and asserts in the introduction to his amended complaint that defendants conspired to discriminate against him because he is "a pro se litigant, immigrant and Jewish." The district court, however, found that Sampson failed to "allege any facts supporting this contention, or indicating that any of these characteristics had any relationship whatsoever to defendants' actions," and held that

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the " amended complaint fails to state a claim under 42 U.S.C.§1985" or raise any other federal question. Consequently, the district court refused to exercise its pendent jurisdiction and rule on Sampson's state law claims and, accordingly, dismissed the action.[2]

Although 42 U.S.C.§1985(3) reaches private conspiracies designed to violate an individual's constitutional rights,[3] as alleged to be the case here, Griffin v. Breckenridge, 403 U.S.88 (1971); Munson v. Friske, 754 F.2d 683 694 (7th Cir.1985), it is not "intended to apply to all tortious, conspiratorial interferences with the rights of others." Griffin v. Breckenridge, 403 U.S. at 101. In order to prevent §1985(3) from operating as a "general federal tort law," the Griffin court requires, as an element of the cause of action, that there be "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." Id.at 102. On appeal, Sampson initially asserts that §1985(3) reaches conspiracies motivated by

animus against Jews. It may well be that a conspiracy to discriminate against Jews comes within the purview of §1985(3). See Marlowe v. Fisher Body, 489 F.2d 1057, 1059, 1064-1065 (6th Cir.1973). It is unnecessary, however, to decide the issue in this case because Sampson has otherwise stated no claim for relief under the statute.[5]

In addition to alleging that the animus of the defendants is class-based, a plaintiff also must show that the animus is invidiously discriminatory; that is, the defendants' hostility toward the identified class must be the motivation, though not necessarily the sole reason, for the challenged conduct. See Jackson v. Cox, 540 F.2d 209, 210 (5th Cir.1976) (per curiam)(allegation that plaintiff is black and defendants are white "fails to allege the kind of class-based, invidiously discriminatory animus behind the conspirators' action"); Hauptmann v. Wilentz, 570 F.Supp. 351, 386 (D.N.J. 1983)("Griffin requires that

a discriminatory animus be'behind' the conspirators' actions."); Rodriguez v. Carroll, 510 F.Supp. 547 (S.D.Tex. 1981)(plaintiff's isolated claim that he was "Mexican-American" and defendants were "Caucasian" alleged "[n]o racial animus behind the conspiracy"). But here, Sampson alleges no facts which demonstrate that he was injured because he is Jewish, the class alleged. Such a sterile, isolated contention, without more, simply fails to allege the kind of class-based invidiously discriminatory animus behind the asserted conspirators' action required by Griffin.
A conspiracy which only affects the plaintiff individually will not satisfy the class-based animus requirement. See Scott v. Rosenberg, 702 F.2d 1263, 1270 (9th Cir. 1983).

Moreower, Sampson's complaint fails to allege facts in support of his conclusory allegation that defendants conspired against him. It is well-settled that a plaintiff, even one proceeding pro se, cannot rest upon the bald assertion of a conspiracy between

defendants in order to state a claim under §1985(3); he must plead "'specific facts as would be admissible in evidence to show the existence of a conspiracy,'" Williams v.City Bank, 566 F.Supp. 827, 831 (E.D.Mo.1983), quoting Fracaro v. Priddy, 514 F.Supp. 191 (M.D.N.C.1981).

See also Henzel v. Gerstein, 608 F.2d 654, 659 (5th Cir. 1979); Thomas v. Rohner-Gehrig & Co., 582 F.Supp. 669, 673 (N.D.Ill. 1984). "[E]ven under the generous standard of Haines v. Kerner, 404 U.S. 519 (1972)], conclusory allegations [of pro se litigants] unsupported by any factual assertions will not withstand a motion to dismiss." Briscoe v. LaHue, 663 F.2d 713, 723 (7th Cir. 1981), aff'd 103 S.Ct. 1108 (1983). Here, Sampson's sole allegation of conspiracy is contained in the following paragraph of his amended complaint:

> 37. The allegations contained in Sampson v. Berger & Barnes Complaint, are sufficient to state a cause of action also against Barnes, under theory of bad faith, that he knew that an expert witness was not required due to the obvious fact of

> deliberate suppression of evidence [by Raskin], yet, Barnes pursued his sinister plot to mislead the Court in collusion with Berger, that an expert witness is mandatory, and Berger will not comply with Court order, and the case will be dismissed with prejudice. Furthermore, Barnes and Berger have been seen and heard by [Sampson] on several occasions plotting defeat of [Sampson]'s cause.

This recitation of conclusory allegations falls far short of the requisite facts upon which a §1985(3) conspiracy claim can be based. Our conclusion is not merely based upon the artlessness of Sampson's pro se pleadings, which, of course, may be forgiven, Briscoe v. LaHue, 663 F.2d at 723, but also upon the failure to articulate any facts to this court in his appellate briefs, or to the district court in his motion for leave to amend, which would establish a basis for his conspiracy allegation.

The failure of Sampson's attorneys in prior civil actions to provide effective representation does not, without more, sufficiently allege conspiratorial conduct. Cf. Brown v. Chaffee,

612 F.2d 497, 502 (10th Cir. 1979)(failure of attorneys in prior civil fraud action to provide effective defense states no claim under the first clause of §1985(2); state law fraud or malpractice are the only conceivable bases for recovery). Neither the civil rights statutes nor the Fourteenth Amendment secure a state court litigant against assertedly ineffective or unprofessional representation or from erroneous state court decisions, especially when the laws and courts of the state are available to furnish adequate remedies to an aggrieved individual. See Curry v. Ragan, 257 F.2d 449, 450 (5th Cir.)(per curiam), cert. denied.358 U.S. 851 (1958); Gill v. Gill, 412 F.Supp. 1153 1157 (E.D.Pa. 1976); Bradford v. Lefkowitz, 240 F.Supp. 969, 977 (S.D.N.Y. 1965). To hold otherwise would make the federal courts the arbiter of the correctness of every state court decision and attorney malpractice claim. Accordingly, we conclude that Sampson has failed to state a federal cause of action under §1985(3).

Similarly, Sampson fails to state a claim under §1985(2). The second part of §1985(2) creates a cause of action for interference with "the due course of justice" in any state or territory.[6] Its language is similar to that employed in the first part of §1985(3).[7] Although there is a dearth of decisional law interpreting the second half of §1985(2),[8] those courts which have construed its provisions require the same class-based, invidiously discriminatory animus as is required under §1985(3). Taylor v. Gilmartin, 686 F.2d 1346, 1360 (10th Cir. 1982), cert.denied, 103 S.Ct. 788 (1983); Williams v. St.Joseph Hospital, 629 F.2d 448, 451 (7th Cir. 1980); Brawer v. Horowitz, 535 F.2d 830, 840 (3d Cir. 1976). Accordingly, for the resons stated above, Sampson states no claim under §1985(2).[9]

In any event, Sampson contends that he should be given an additional opportunity to amend his complaint and that the district court erred in failing to grant him leave to

do so. While leave to amend should be freely given when justice so requires, Fed.R.Civ.P. 15(a); Carl Sandburg Village Condominium Ass'n No.1 v. First Condominium Development Co., No. 84-1558, slip op. at 4 n.1 (7th Cir. March 27, 1985), the district court's denial of such a request will not be reversed on appeal absent an abuse of discretion. Id. Where, as here the only federal claim rests upon allegations of an ever-expanding conspiracy based solely upon conclusory allegations, and the litigant is attempting to have federal courts retry civil issues once put to rest by state courts, and since the complainant has already been given one opportunity to replead, we do not find that the district court abused its discretion.

Accordingly, the judgment of the district court is AFFIRMED.

* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argu-ment would not behelpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Rule 34(a), Fed.R. App.P.; Circuit Rule 14(f). No such statement having been filed, the appeal has been submitted on the briefs and record.

---

1 The sole defendant named in Counts I and II is Raskin while Barnes and Berger are the only defendants named in Count III. The claims against Raskin are distinct and stand alone against those relating to Barnes and Berger. Although Sampson characterizes his first count as one for "Deprivation of Constitutional and Civil Rights," it is clear from the allegations that Raskin was engaged in private litigation on behalf of Sampson. Since a private attorney, acting individually, does not act "under color of state law," Sampson fails to state a federal rights claim against Raskin. See French v. Corrigan, 432 F.2d 1211, 1214-1215 (7th Cir. 1970), cert. denied, 401 U.S. 915 (1971). See also Loyd v. Loyd, 731 F.2d 393, 398 (7th Cir.1984).

2 After the district court dismissed his complaint and denied leave to amend, Sampson returned to state court where he amended his complaint in Sampson v. Barnes and Berger, Cook County Circuit Court No.82 L 10762, to add as defendants the two attorneys who obtained the dismissal of Sampson's claims

before the district court in this case. The new allegations take the form of an ever-widening conspiracy to discriminate against Sampson.

3 The first part of §1985(3) provides a cause of action against two or more persons who conspire to deprive "persons of the equal protection of the laws, or of the equal privileges and immunities under the laws" while the second part of §1985(3) relates to the right to support candidates in federal elections. See generally Kush v. Rutledge, 103 S.Ct.1483 (1983). Clearly, the instant case involves an application of the first, rather than the second, part of §1985 (3).

4 Race, of course, is the quitessential invidious class. Indeed, the Supreme Court has not clearly explicated what classes, other than racial ones, might be protected by §1985(3). See United Brotherhood of Carpenters & Joiners v. Scott, 103 S.Ct.3352, 3359 (1983); Griffin v. Breckenridge, 403 U.S.88, 102 n.9 (1971). However, the same characteristics which are immutable to the black race apply equally to the Jewish people. Like blacks, Jews have been the victim of "historically pervasive discrimination." Cf. Carchman v. Korman Corp.,594 F.2d 354, 356 (3d Cir.), cert.denied, 444 U.S.898 (1979)(tenant organizers not victims of "historically pervasive discrimination"); Hauptmann v. Wilentz, 570 F.Supp.351, 385-386 (D. N.J.1983)(women, like blacks, victim of "historically pervasive discrimination").

5 Likewise, the validity of a §1985 action based upon Sampson's status as an immigrant and naturalized citizen need not be addressed. We would note, however, that Sampson's status as a member of a class of pro se litigant fails to meet the class-based animus requirement of §1985. In Blevins v. Ford,572

F.2d 1336, 1338 (9th Cir.1978), a pro se prisoner failed to state a claim under §1985 against a group of lawyers wherein he alleged that he was discriminated against because he was a layman. Here, as in Blevins, the identifying characteristic of pro se litigants--their non-lawyer status--is the same. See also Silo v. City of Philadelphia, 593 F.Supp.870, 874 (E.D.Pa.1984)(pro se state court petitioners are not a class subject to protection under §1985(2) and (3). Moreover, Sampson's complaint does not charge a conspiracy directed at pro se litigants as a class. Rather, Sampson complains of the conduct of three people who are also lawyers, directed at one person who is not a lawyer, but not because he is not a lawyer. See discussion infra.

6 The first part of §1985(2) relates to conspiracies to interfere with the administration of justice in federal courts. See Kush v. Rutledge, 103 S.Ct.1483 (1983). Here, however, Sampson alleges no facts which in any way relate to federal judicial proceedings.

7 The key phrase of §1985(3), "equal protection of the laws," appears twice in the second part of §1985(2). A conspiracy to interfere with "the due course of justice" requires an intent either "to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws." (Emphasis added). Cf. Kush v. Rutledge, 103 S.Ct. at 1487-1488. In Kush the Supreme Court held that no class-based, invidiously discriminatory animus be alleged in a claim under the first clause of §1985(2). Expressly contrasting the first of §1985(2) with its second clause, the Court noted that the first clause did not contain the language common between §1985(3)'s first clause and the second part of §1985(2) "req= uiring that the conspirators' action be

motivated by an intent to deprive their victim of the equal protection of the laws."Id.at1487.

[8] There also exists a concomitant uncertainty as to the parameters of §1985(2)'s second clause. See, e.g., Britt v. Suckle, 453 F.Supp. 987, 992-1002 (E.D.Tex.1978). It is not necessary, however, that we resolve its scope in the context of the present appeal.

[9] Section 1986 creates a cause of action against the knowing failure to prevent the perpetration of any of the wrongs described in §1985, by anyone having the power to do so. Such an individual is liable "for all damages caused by such wrongful acts, which such person by reasonable diligence could have prevented." No claim for relief will lie under §1986, however, unless a cause of action can be established under §1985. Bell v. City of Milwaukee, 746 F.2d 1205, 1233 (7th Cir.1984); Williams v. St.Joseph Hospital, 629 F.2d 448, 452 (7th Cir.1980). Having failed to state a claim under §1985, Sampson has no cause of action under §1986.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

July 1, 1985

No.84-1730 Before

Hon. JESSE E. ESCHBACH, Circuit Judge
Hon. JOHN L. COFFEY, Circuit Judge
Hon. JOEL M. FLAUM, Circuit Judge

JACOB SAMPSON, Plaintiff-Appellant, vs. FRED B.RASKIN, MYRON A. BERGER & JOHN M.BARNES, Defendants-Appellees.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 83 C 6369

ORDER

On consideration of the petition for rehearing and suggestion for rehearing en banc filed in the above-entitled cause by plaintiff-appellant, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly, IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

Supreme Court, U.S.
FILED
DEC 20 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-982

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

JACOB SAMPSON,

Petitioner,

v.

FRED B. RASKIN, MYRON A. BERGER & JOHN M. BARNES,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the decision of the United States District Court for the Northern District of Illinois that the Petitioner failed to state any federal cause of action against the Respondent, and the affirmation of that decision by the United States Court of Appeals for the Seventh Circuit, decided important questions of federal law which have not been settled by this Court, decided federal questions in conflict with decisions of this Court and other Federal Courts, or otherwise rendered opinions which should be reviewed by this Court.

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IN THE

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SUMMARY OF ARGUMENT

The Petitioner, in his Petition for Writ of Certiorari, sets forth several questions to be presented for review. Those questions purportedly establish the considerations upon which the Petitioner would have this Court rely in determining whether or not to grant the Petition for Writ of Certiorari.

The questions presented, however, do not accurately set forth the issues delineated by the rulings of the District and Appellate Courts. Each of the issues put before this Court by the Petitioner relates to whether or not immigrants or persons of the Jewish faith can be deemed a class against which an

invidiously discriminatory animus, required as an element of a cause of action under 42 U.S.C. § 1985, can be directed.

The orders of the District and Appellate Courts, however, do not decide whether immigrants or persons of the Jewish faith can or cannot be the targets of such a class based, invidiously discriminatory animus on the part of alleged conspirators. Indeed, the opinions of the lower Court even suggest that those of the Jewish faith could very well be a class open to invidious discrimination. Rather, the District Court for the Northern District of Illinois and the Appellate Court for the Seventh Circuit dismissed the Petitioner's Complaint at Law, as amended, for failure to state a cause of action upon which any relief could be granted. In particular, the Petitioner's Amended Complaint at Law was dismissed because facts sufficient to set forth the appropriate conspiracy, and acts in furtherance of that conspiracy, were not pleaded.

There exists no basis for the issuance of a Writ of Certiorari. The opinions of the District Court for the Northern District of Illinois and the Appellate Court for the Seventh Circuit are not in conflict with decisions made by other federal and state courts in similar matters. Neither have the lower courts decided any questions which have not been, but should be, addressed by this Court. There is no sound basis for granting a Writ of Certiorari and the Petitioner's Petition should be denied.

ARGUMENT

The Petitioner, JACOB SAMPSON, filed his Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit on or about October 17, 1985. On November 11, 1985, this Respondent was served with a second Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit. The latter Petition purports to be an amended version of the Petition which was filed in October of 1985. A third Petition was served on or about November 25, 1985. All seek review of the same rulings, to wit: the Memorandum Opinion of the United States District Court for the Northern District of Illinois (Petition Appendix 1a-12a) and the Order of the United States Court of Appeals for the Seventh Circuit entered on June 4, 1985 (Petition Appendix 13a-23a).

In his Petition, the Petitioner has represented to this Court that the decision of the District Court for the Northern District of Illinois dismissing his First Amended Complaint at Law, without leave to amend, and the decision of the United States Court of Appeals for the Seventh Circuit affirming the decision of the District Court, are in conflict with the decisions of other federal courts and raise questions which should be considered by this Court.

Each of the questions presented by the Petitioner for the review of this Court relates to the classification of immigrants or persons of the Jewish faith as groups of people against whom class based, invidiously discriminatory activity can be directed. Specifically, the Petitioner questions whether either 42 U.S.C. § 1981 or 42 U.S.C. § 1985 protects persons of the Jewish faith; whether 42 U.S.C. § 1985 protects immigrants; and whether individuals who are not members of a class protected under 42 U.S.C. § 1985 can bring a suit for damages under that section. SEE PETITION 85-982, p.i.

A review of the orders in question (Petition Appendix 1a-23a), however, will show that the Petitioner's Amended Com-

plaint at Law was not dismissed because immigrants, those of the Jewish faith, or other classes of persons are not suspect classes under 42 U.S.C. 1985, but that it was dismissed for failure to otherwise state a cause of action, and, in particular, for failure to properly allege a conspiracy (Petition Appendix 5a); for failure to allege the existence of a class based, invidious animus (Petition Appendix 7a); for failure to allege any relationship between the alleged actions of the defendants and a class based, invidious discrimination, (Petition Appendix 8a); for failure of the Petitioner to demonstrate any conspiracy to deprive him of his rights under the law (Petition Appendix 9a); and for failure to allege any facts which would provide any basis for his allegations of the existence of a conspiracy (Petition Appendix 17a).

The United States District Court for the Northern District of Illinois dismissed the plaintiff's Amended Complaint at Law on or about March 30, 1984. Leave to amend was denied. As stated in the opinion of the District Court, the Amended Complaint at Law of the Petitioner was read very liberally (Petition Appendix 3a). That liberal reading of the Petitioner's Amended Complaint at Law led the District Court to the conclusion that the Petitioner was bringing his suit under either 42 U.S.C. § 1985(2) or 42 U.S.C. § 1985(3) (Petition Appendix 3a). The District Court then proceeded to discuss the sufficiency of the Petitioner's allegations of conspiracy.

According to the District Court, a bare allegation of conspiracy, unsupported by factual allegations, was insufficient to state a cause of action under 42 U.S.C. § 1985 (Petition Appendix 5a). The Petitioner's allegations of conspiracy were found to be sweeping and vague. However, given the liberal reading of those allegations required in the case of a *pro se* plaintiff, the Court held that the allegations sufficiently apprised the defendants of the nature of the claim against them (Petition Appendix 6a). But the District Court went on to state that a cause of action under 42 U.S.C. § 1985 must be supported by allegations showing that the defendants conspired against the plaintiff because of his membership in a particular class (Peti-

tion Appendix 7a). Those allegations must set forth, with some specificity, facts indicating the existence of a class based, invidious animus (Petition Appendix 7a). The District Court then dismissed the Petitioner's Complaint because of his failure to allege and establish any class based, invidious animus at all (Petition Appendix 7a). It did not dismiss the Amended Complaint at Law because of the Petitioner's failure to qualify as a member of a class which was the target of a class based, invidious animus. Moreover, the District Court held that the Petitioner alleged no facts which would indicate that his status as either an immigrant, a person of the Jewish faith or a *pro se* plaintiff had any relationship, whatsoever, with the alleged actions of the defendants (Petition Appendix 8a).

In reviewing and affirming the decision of the District Court, the United States Court of Appeals for the Seventh Circuit noted that a required element of a cause of action under 42 U.S.C. § 1985(3) is the existence of a racial or class based, invidiously discriminatory animus behind the actions of the alleged conspirators (Petition Appendix 15a). The Circuit Court of Appeals then noted that persons of the Jewish faith may very well be a suspect class under 42 U.S.C. § 1985(3) (Petition Appendix 15a) but went on to hold that, regardless of the classification of persons of the Jewish faith as a suspect class under 42 U.S.C. § 1985(3), the Petitioner otherwise failed to state a cause of action (Petition Appendix 15a). Furthermore, they expressly declined to decide the issue of the classification of persons of the Jewish faith as a suspect class (Petition Appendix 15a).

More particularly, the Circuit Court of Appeals held that a Plaintiff is required to show that the conduct of alleged conspirators was motivated by the conspirators hostility toward the suspect class (Petition Appendix 15a). A conspiracy affecting only the plaintiff, as an individual, is not sufficient under 42 U.S.C. § 1985 (Petition Appendix 16a). The Petitioner, however, did not allege any facts which showed that he was injured as a result of his membership in a suspect class (Petition

Appendix 16a). The alleged conspiracy of the defendants affected the Petitioner only as an individual.

Lastly, the Court of Appeals noted that the Petitioner's Amended Complaint did not allege any facts in support of his allegation of a conspiracy against him (Petition Appendix 16a). Some specific facts would be required to show the existence of a conspiracy. According to the Circuit Court of Appeals, the Petitioner's conclusory allegations did not allege the facts upon which a 42 U.S.C. § 1985(3) conspiracy could be based (Petition Appendix 17a). The District's Court dismissal of the Petitioner's Amended Complaint was, therefore, affirmed. A rehearing before the United States Court of Appeals for the Seventh Circuit was denied on July 1, 1985 (Petition Appendix 23a).

CONCLUSION

The orders entered by the United States District Court for the Northern District of Illinois and the United States Court of Appeals for the Seventh Circuit are clear and explicit in their holdings. The Petitioner's Amended Complaint at Law was dismissed for failure to allege, with even minimal specificity, any facts which could support a cause of action under 42 U.S.C. § 1985(3) or, as stated by the District Court, under any other federal statutes (Petition Appendix 9a). Specifically, the orders of the District Court and the Circuit Court indicate that the Petitioner failed to properly allege any conspiracy, whatsoever, on the part of the defendants; failed to allege the requisite class based, invidious animus on the part of the defendant; failed to allege that any actions of the defendants were motivated by the Petitioner's membership in any particular class; and failed to allege and show that he was injured as a result of his association with any potential suspect class. Neither the District Court for the Northern District of Illinois nor the Court of Appeals for the Seventh Circuit made any ruling with regard to the classification of immigrants, persons of the Jewish faith or *pro se* plaintiffs as suspect classes for the purpose of bringing an action under 42 U.S.C. § 1985. In fact, both the District Court and the Circuit Court avoided ruling on that issue and expressly dismissed the Petitioner's Amended Complaint on other grounds (Petition Appendix 9a, 11a, 15a).

The issues decided by the District Court for the Northern District of Illinois and the Court of Appeals for the Seventh Circuit in dismissing the Petitioner's Amended Complaint at Law are not in conflict with other federal courts. Neither do they decide any issues which have not been previously decided by this Court. The only questions presented for review by the Petitioner are questions which were not decided by either the District Court for the Northern District of Illinois or the Court of Appeals for the Seventh Circuit in their dismissal of the Petitioner's Amended Complaint at Law. It was not necessary

to resolve those questions prior to ruling that the Petitioner failed to state a cause of action. The Petitioner's Amended Complaint at Law was dismissed on other grounds. The Petitioner has not presented any support or basis for his Petition for a Writ of Certiorari and this Court should, therefore, exercise its discretion and deny the Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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